

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ORAH LEE PRESLEY III,

Plaintiff,

V.

GARDNER M TORRENCE SR., an individual; and JAMES M. TROUTT II, an individual.

Defendants.

CASE NO. 3:13-CV-05040-BHS

ORDER GRANTING
DEFENDANTS' MOTION
TO DISMISS

This matter comes before the Court on Defendants Gardner Torrence, Sr.

(“Torrence”) and James F. Troutt II’s (“Troutt”) (collectively “Defendants”) motion to dismiss (Dkt. 10). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On January 18, 2013, Plaintiff Orah Lee Presley III (“Presley”) filed a complaint against Defendants. Dkt. 1. Defendants filed a motion to dismiss on February 26, 2013.

1 Dkt. 10. Presley filed a response on March 13, 2013. Dkt 16. Defendants then filed a
2 reply on March 18, 2013. Dkt. 18. On April 1, 2013, Presley improperly and untimely
3 filed a reply to Defendants' motion (Dkt. 22), a reply memorandum (Dkt. 21), and a
4 proposed order (Dkt. 23). Because these pleadings were improperly filed, the Court did
5 not consider them in deciding this motion.

6 **II. FACTUAL BACKGROUND**

7 **A. The Parties**

8 Presley is a suspended member of the M. W. Prince Hall Grand Lodge of
9 Washington ("the Grand Lodge"). Dkt. 1 at 1. Defendant Torrence is the Grand Master
10 of the Grand Lodge and Defendant Troutt is the Grand Secretary of the Grand Lodge.
11 Dkt. 11 at 1. All three men are citizens of Washington State. Dkt. 1 at 1; Dkt. 11 at 1.

12 **B. Masonic Rules and Regulations**

13 The Grand Lodge, which is not a party to this suit, is a Washington nonprofit
14 corporation and Freemason Grand Lodge. Dkt. 11 at 1. Masonic rules are set forth in the
15 1903 Grand lodge Constitution and Bylaws. *Id.* at 2. Under Article 3 of the Constitution,
16 the Grand Lodge must hold an annual meeting of all its members, called the Annual
17 Communication, on the second Monday of July every year. *Id.* at 5. The Annual
18 Communication is also known as the "Grand Lodge in Session." Dkt. 10 at 4. According
19 to the Constitution, the Grand Master possesses almost total control over the Grand
20 Lodge; however, every decision made by the Grand Master must ultimately be approved
21 by the votes of the entire membership at the Annual Communication. Dkt. 11 at 8.
22

1 In addition to being required to approve the Grand Master's decisions, Article 11
2 of the Constitution makes clear that the Grand Lodge in Session has "supreme, inherent
3 and absolute legislative, judicial and executive Masonic authority and power . . ." *Id.* at
4 7. Furthermore, Article 12, Section 14, confirms that the Grand Lodge in Session has the
5 power to decide all appeals by members of any decisions. *Id.* at 8. In addition, Article
6 15, Section 15.08, of the Constitution states that members must exhaust Masonic
7 remedies before initiating any civil action. *Id.* at 12. Finally, the Grand Lodge Bylaws,
8 Title 207, specifies that appeals shall be submitted to the Grand Lodge in Session for
9 review of "judgments, orders, verdicts, decisions or sentences . . . in any disciplinary
10 proceedings . . ." *Id.* at 22.

11 **C. Presley's Complaint**

12 On November 7, 2013, Torrence, in his role as the Grand Master, suspended
13 Presley from the Grand Lodge "for repetitive detrimental and unwarranted comments
14 toward this office and ultimately a blatant form of 'Contumacy' toward the Office of the
15 Grand Master." *Id.* at 24. Since being suspended, Mr. Presley has not taken any action to
16 appeal Torrence's decision within the Grand Lodge. *Id.* at 2.

17 Presley's complaint contains allegations of "racketeering activities," "criminal
18 activity," "fraud," "predicate acts" and the like. *See* Dkt. 1. Presley's accompanying
19 Affidavit of Material Facts identifies one act by the Defendants, namely that of
20 suspending Presley from Masonry. *See* Dkt. 2.

21

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1 The next Annual Communication will be held in July. Although Presley has not
2 filed an appeal of his suspension to the Grand Lodge, it is not too late for him to do so.
3 Dkt. 11 at 2.

4 **III. DISCUSSION**

5 **A. Legal Standards**

6 **1. Federal Rule of Civil Procedure 12(b)(6)**

7 Under Rule 12(b)(6), a district court must dismiss a complaint if it fails to state a
8 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a Rule
9 12(b)(6) motion to dismiss, a plaintiff must allege “enough facts to state a claim to relief
10 that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
11 This “facial plausibility” standard requires the plaintiff to allege facts that add up to
12 “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*,
13 556 U.S. 662, 678 (2009). The court must assume that the plaintiff’s allegations are true
14 and must draw all reasonable inferences in the plaintiff’s favor. *Usher v. City of Los*
15 *Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is not required to accept
16 as true “allegations that are merely conclusory, unwarranted deductions of fact, or
17 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
18 2008).

19 Pro se complaints are held to “less stringent standards than formal pleadings
20 drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Where the petitioner
21 is pro se, the court has an obligation, particularly in civil rights cases, to construe the
22 pleadings liberally and to afford the petitioner the benefit of any doubt. *Bretz v. Kelman*,

1 773 F.2d 1026, 1027 n. 1 (9th Cir. 1985) (en banc). Nonetheless, a pro se plaintiff must
2 allege facts sufficient to allow a reviewing court to determine that a claim has been
3 stated. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

4 If a court dismisses a complaint under Rule 12(b)(6), it must then decide whether
5 to grant leave to amend. The Ninth Circuit has “repeatedly held that a district court
6 should grant leave to amend even if no request to amend the pleading was made, unless it
7 determines that the pleading could not possibly be cured by the allegation of other facts.”
8 *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (citations and internal quotation
9 marks omitted). “[D]ismissal of a pro se complaint without leave to amend is proper only
10 if it is absolutely clear that the deficiencies of the complaint could not be cured by
11 amendment.” *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (citation
12 omitted).

13 **2. Federal Rule of Civil Procedure 12(b)(1)**

14 Under Rule 12(b)(1), a complaint may be dismissed for lack of subject matter
15 jurisdiction. Fed. R. Civ. P. 12(b)(1). When considering a Rule 12(b)(1) motion
16 challenging the substance of jurisdictional allegations, the court may look beyond the
17 complaint. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) (district court may consider
18 extrinsic evidence when deciding a Rule 12(b)(1) motion to dismiss for lack of subject
19 matter jurisdiction). However, the court may not resolve “genuinely disputed facts where
20 the question of jurisdiction is dependent on the resolution of factual issues going to the
21 merits.” *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (internal citation
22 omitted). Where jurisdiction is “intertwined with the merits,” the court must “assume the

1 truth of the allegations in the complaint . . . unless controverted by undisputed facts in the
2 record." *White*, 227 F.3d at 1242.

3 **B. Application of Legal Standards**

4 It appears, from a liberal reading of the complaint, that Presley alleges two claims.
5 The first is that the Defendants violated the Racketeer Influenced and Corrupt
6 Organizations Act ("RICO"), 18 U.S.C. 1961, *et seq.* The second appears to be that
7 Defendants wrongfully suspended Presley's membership to the Grand Lodge.

8 **1. RICO Claim**

9 As stated above, to survive a Rule 12(b)(6) motion to dismiss, the plaintiff must
10 allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic*
11 *Corp.*, 550 U.S. at 570. This requires the plaintiff to allege facts that add up to "more than
12 a sheer possibility that a defendant has acted unlawfully." *Ashcroft*, 556 U.S. at 678.
13 Presley has failed to meet this burden. The complaint fails to allege facts which describe
14 any racketeering activity under 18 U.S.C. 1961(1) or any pattern of racketeering activity
15 under 18 U.S.C. 1961(5). Mere allegations of RICO violations, without specific facts
16 showing more than a sheer possibility that Defendants have acted unlawfully, is
17 insufficient to maintain a claim against Defendants.

18 The Court, therefore, grants Defendants' motion to dismiss Presley's RICO claim
19 for failure to state a claim on which relief can be granted. However, it is not absolutely
20 clear that the deficiencies of the complaint could not be cured by amendment. Therefore,
21 the Court grants Presley leave to cure the factual deficiencies as discussed above.
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1 **2. Wrongful Suspension Claim**

2 In addition to Presley's RICO claim, the complaint, if construed liberally, includes
3 an allegation that Defendants wrongfully suspended Presley's contractual membership
4 from the Grand Lodge. "As a general rule, courts refrain from interfering in the internal
5 affairs of voluntary associations." *Anderson v. Enterprise Lodge No. 2*, 906 P.2d 962
6 (Wash. App. 1995). This judicial policy of non-interference is especially strong where
7 fraternal organizations are concerned:

8 Fraternities . . . involve primarily an element of fellowship and association
9 which falls outside the law and the review of the courts. This element can
have played no small part in the trend of the decisions touching the court's
attitude toward the internal workings of such organizations.

10 *Washington Local Lodge No. 104 v. International Board of Boilermakers*, 183 P.2d 507,
11 510 (Wash. 1947). In *Lodge No. 104*, the court stated that exhaustion of internal
12 remedies is a jurisdictional requirement when a member's dispute with a voluntary
13 association is "of a nonfinancial, internal, and disciplinary nature." *Id.* at 509.

14 Here, the Constitution of the Grand Lodge unambiguously requires Presley to
15 exhaust the remedies provided "by the Constitution, laws and regulations of this Grand
16 Lodge" before filing a civil lawsuit. Dkt. 11 at 12. The uncontested record
17 establishes that Presley did not appeal the decision of Grand Master Torrence to suspend
18 him from the Grand Lodge to the Annual Communication. For this reason, the Court
19 lacks jurisdiction to adjudicate this matter and therefore dismisses the wrongful
20 suspension claim.

IV. ORDER

2 Therefore, it is hereby **ORDERED** that Defendants' motion to dismiss (Dkt. 10) is
3 **GRANTED**. To the extent Presley's complaint alleges a RICO violation, the Court
4 grants leave to cure the factual deficiencies as discussed above, insomuch as the
5 additional facts are necessary to allege a prima facie RICO violation. The Court may
6 strike, *sua sponte*, any supplemental information provided that goes beyond the scope of
7 this order and beyond alleging a prima facie RICO violation. Presley must file an
8 amended complaint by April 19, 2013. If Presley fails to file his amended complaint by
9 April 19, 2013, the Court will dismiss this case without prejudice and without further
10 notice to the parties.

Dated this 8th day of April, 2013.



BENJAMIN H. SETTLE
United States District Judge